IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 577 OF 1994

The State of Maharashtra ...Appellant.

V/s

Shri Girishkumar A. Dedhia
c/o. M/s Anchor Products,
Laxmi Udyog Nagar, L.B.S. Marg,
Kanjur Marg (West),
Bombay 400 078. ...Respondent.
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Mr. A.S. Shitole for the appellant - State.

None for the respondent.
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CORAM: V.M.KANADE,J.
DATE: 22nd February, 2005

ORAL JUDGMENT:

1. Appellant is challenging the judgment and order passed by the Additional Chief Metropolitan Magistrate, 46th Court, Mazgaon, Bombay in C.C. No. 389/S/1989 whereby the learned Magistrate was pleased to acquit the respondent - accused of the offence punishable under section 7(i) read with section 2(ia)(m) read with sections 16 and 17 of the Prevention of Food Adulteration Act, 1954 (Fort short "PFAA").

2. The prosecution case is that the complainant visited the premises of the accused along with an

independent witness Shri Atmaram Mane and purchased 900 gms of sugar coated confectionery and sent it to the Public Analyst who gave a report that the sample was adulterated. The prosecution examined three witnesses viz. P.W. 1 - Gajanan Patkar, who is a clerk working in the LHA, P.W. 2 - F. I. Shaikh, the Food Inspector who had filed the complaint against the accused and P.W. 3 - Atmaram Mane who was the panch witness in whose presence the sample was taken.

3. I have perused the evidence which is brought on record as also the judgment and order of the Trial Court. P.W. 3 - Atmaram Mane has not supported the prosecution case. He has stated that the sample in question was not taken in his presence and even the labelling and sealing also was not done in his presence but he had merely signed the panchanama and other papers at Exhibits-P-12, 13, 14 and 15. This witness (P.W. 3) has not been declared as hostile witness by the prosecution. From the evidence of this witness, it can be seen that the prosecution has failed to prove that the complainant had taken the sample in the presence of an independent witness. Thus, there is a serious infirmity in the prosecution case regarding the procedure of taking sample, sealing the same and sending it to the Public Analyst. P.W.

2 in his cross-examination has admitted that he had not sealed the polythene bag after the sample was put in the said bag. He has further admitted that the polythene bag was not cleaned in his presence before the sample was put in the bag. Thus, even otherwise, from the admission of the Food Inspector it is clear that the provisions of Rules 14 and 16 of the Prevention of Food Adulteration Rules, 1955 have not been complied with. Thus, there is no reason to interfere with the finding recorded by the Trial Court.

4. The appeal is accordingly dismissed.

(V.M. KANADE, J.)